

1 Jody M. McCormick, WSBA # 26351  
2 Steven J. Dixson, WSBA # 38101  
3 WITHERSPOON · KELLEY  
4 422 West Riverside Avenue, Suite 1100  
5 Spokane, WA 99201-0300  
6 Telephone: (509) 624-5265  
7 Facsimile: (509) 458-2728  
8 jmm@witherspoonkelley.com  
9 sjd@witherspoonkelley.com

**Honorable Richard A. Jones**

10 *Attorneys for Defendants Federal National  
11 Mortgage Association, Bank of America,  
12 N.A., for itself and as successor by merger  
13 to BAC Home Loans, Servicing, LP and  
14 ReconTrust Company, N.A. (erroneously  
15 sued as “ReconTrust”)*

16 UNITED STATES DISTRICT COURT  
17 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

18 BARJINDER SINGH AND RAMANDEEP  
19 KAUR,

20 Plaintiffs,

vs.

21 FEDERAL NATIONAL MORTGAGE  
22 ASSOCIATION; BANK OF AMERICA, N.A.,  
23 BAC Home Loans Servicing, LP; and  
24 RECONTRUST; and Doe Defendants 1 through  
25 20, inclusive,

26 Defendants.

27 Case No. 2:13-cv-01125-RAJ

28 MOTION FOR LEAVE TO FILE REPLY  
IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS, OR  
ALTERNATIVELY, MOTION TO STRIKE  
PLAINTIFFS' RESPONSE

NOTED ON MOTION CALENDAR:  
AUGUST 23, 2013

**I. INTRODUCTION**

29 Defendants Federal National Mortgage Association, Bank of America, N.A., for itself  
30 and as successor by merger to BAC Home Loans Servicing, LP and ReconTrust Company, N.A.  
31 (collectively “Defendants”) hereby move this Court for an Order granting leave to file a Reply  
32 in support of their Motion to Dismiss, or in the alternative, for an Order striking Plaintiffs’  
33 untimely and over-length Response to the Motion to Dismiss (“Response”).

34 MOTION FOR LEAVE TO FILE REPLY, OR  
35 ALTERNATIVELY, MOTION TO STRIKE - 1

**WK WITHERSPOON · KELLEY**  
36 Attorneys & Counselors

## II. LEGAL ARGUMENT

**A. The Court Should Permit Defendants Leave To File A Reply Or Strike Plaintiffs' Response Because it Violates Local Court Rules**

Plaintiffs' Response to Defendants' Motion to Dismiss is blatantly untimely and over-length. As such, in the interests of justice, Defendants should either be granted leave to file a Reply thereto, or the Response should be stricken for failure to comply with the Local Rules of the Western District of Washington.

**First**, Plaintiffs' Response is untimely. Local Rule of Court 7(d)(3) states that "Motions to Dismiss...shall be noted for consideration on a date no earlier than the third Friday after filing and service of the motion. **Any opposition papers shall be filed and served not later than the Monday before the noting date.**" (Emph. added). In addition, the Rule specifies that "[a]ny reply papers shall be filed and served no later than the noting date. *Id.* Here, the noting date was Friday, August 2, 2013. In accordance with the Local Rules of this Court, Plaintiffs' Response was due to be filed and served no later than Monday, July 29, 2013. Instead, Plaintiffs filed their Response on the evening of Monday, August 12, 2013, without seeking leave of Court to file same. ECF No. 12. Not only is this two weeks after it was due per the Court's Local Rules, but it is in fact a full ten days after the noting date for consideration of the Motion to Dismiss by the Court.

Responsive pleadings are mandatory under the Court's Local Rules. LCR 7(b)(2)(providing that "[e]ach party opposing the motion **shall**, within the time prescribed in CR7(d), file . . . a brief in opposition to the motion . . . ." [emphasis supplied]). "If a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit." *Id.* However, reply briefs are permissive. LCR 7(b)(3).

MOTION FOR LEAVE TO FILE REPLY, OR  
ALTERNATIVELY, MOTION TO STRIKE - 2

**Wk** WITHERSPOON•KELLEY  
Attorneys & Counselors

1 Because Plaintiff did not file a timely response, Defendants believed that Plaintiff chose to  
 2 concede the merits of Defendants' Motion to Dismiss and, based on such belief, did not file a  
 3 reply.

4 However, now that Plaintiff has filed an untimely response past the noting date and the  
 5 date a Reply would otherwise be due, Defendants are unaware what their deadline is for filing a  
 6 Reply, if indeed the Court will even entertain any Reply. Plaintiffs compounded their error by  
 7 waiting another day to file additional untimely documents in clear violation of the Court's Local  
 8 Rules. Plaintiffs filed a Declaration of Huelsman in support of their Response on August 13,  
 9 2013, again without seeking leave to file such an untimely document. ECF No. 13. As such,  
 10 Plaintiffs' inability to comply with the Local Rules has prejudiced Defendants' ability to  
 11 properly and meaningfully reply to the Response. On this basis alone, Plaintiffs' Response  
 12 should be stricken.

15 **Second**, Plaintiffs' Response is over-length. In addition to being blatantly untimely,  
 16 Plaintiffs' Response further flaunts the Court's Local Rules by being over-length. Local Rule  
 17 of Court 7(e)(3) states that "motions to dismiss...and briefs in opposition shall not exceed  
 18 twenty-four pages." Here, without seeking leave of this Court, Plaintiff filed a 26 page  
 19 Response, a clear violation of Local Rule 7(e)(3). Again, the length of the Response is  
 20 particularly prejudicial to Defendants because it is not clear whether the Court will accept the  
 21 Response, or whether it will even permit Defendants to file a Reply to rebut the inaccuracies  
 22 presented therein. Due to Plaintiffs' flagrant disregard for the Rules of this Court, Defendants  
 23 request that Plaintiffs' Response be stricken, or in the alternative, that Defendants be given  
 24 leave to file a Reply in Support of their Motion to Dismiss.

28 MOTION FOR LEAVE TO FILE REPLY, OR  
 ALTERNATIVELY, MOTION TO STRIKE - 3

**WK** WITHERSPOON • KELLEY  
 Attorneys & Counselors

### III. CONCLUSION

Plaintiffs' untimely, over-length Response violated the Local Rules of this Court and should be stricken. Alternatively, Defendants request that they be given leave to file a Reply in support of their Motion to Dismiss for failure to state a claim under Federal Rule 12(b)(6).

Respectfully submitted this August 15th, 2013.

# WITHERSPOON KELLEY

By: *s/Jody M. McCormick*

Jody M. McCormick, WSBA # 26351

jmm@witherspoonkelley.com

Steven J. Dixson, WSBA #38101

sjd@witherspoonkelley.com

Witherspoon Kelley

422 West Riverside, Suite 1100

Spokane, WA 99201-0300

Telephone: 509.624.5265

Facsimile: 509.458.2728

*Attorneys for Defendants*

Mortgage Association, E

*N.A., for itself and as suc*

### *to BAC Home Loans, S*

*ReconTrust Company, N.A. (erroneously sued as "ReconTrust")*

MOTION FOR LEAVE TO FILE REPLY, OR  
ALTERNATIVELY, MOTION TO STRIKE - 4



# WITHERSPOON•KELLEY

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 15<sup>th</sup> day of August, 2013,

1. I caused to be electronically filed the foregoing MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS, OR ALTERNATIVELY, MOTION TO STRIKE PLAINTIFFS' RESPONSE with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

**Melissa A. Huelsman**  
**[mhuelsman@predatorylendinglaw.com](mailto:mhuelsman@predatorylendinglaw.com),**  
**[paralegal@predatorylendinglaw.com](mailto:paralegal@predatorylendinglaw.com)**

2. I hereby certify that I have mailed by United States Postal Service the foregoing document to the following non-CM/ECF participants at the address listed below: **None**.
3. I hereby certify that I have mailed by United States Postal Service the document to the following CM/ECF participants at the address listed below: **None**.
4. I hereby certify that I have hand-delivered the document to the following participants at the addresses listed below: **None**.

s/Jody M. McCormick  
Jody M. McCormick WSBA # 26351  
Steven J. Dixson, WSBA # 38101  
WITHERSPOON · KELLEY  
422 W. Riverside Ave., Suite 1100  
Spokane, WA 99201-0300  
Phone: 509-624-5265  
Fax: 509-458-2717  
[jmm@witherspoonkelley.com](mailto:jmm@witherspoonkelley.com)  
[sid@witherspoonkelley.com](mailto:sid@witherspoonkelley.com)

MOTION FOR LEAVE TO FILE REPLY, OR  
ALTERNATIVELY, MOTION TO STRIKE - 5



# WITHERSPOON•KELLEY

Attorneys & Counselors